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## **Georgia Department of Revenue Informational Bulletin SUT-2007-08-28 Alternative Fuel Facility Exemption**

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This informational bulletin explains the Georgia sales and use tax exemption for sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility. This exemption is available to alternative fuel facilities, as well as contractors and subcontractors, that purchase tangible personal property to be used in the construction of an alternative fuel facility.

**Exemption Statute: O.C.G.A. § 48-8-3(34.4)**

Code Section 48-8-3(34.4) provides as follows:

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) 'Alternative fuel facility' means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) 'Used in or for the construction' means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner

certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol, butanol, and their by-products has begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007 through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph.

O.C.G.A. § 48-8-3(34.4).

### **Alternative Fuel Facility**

The term 'alternative fuel facility' is expressly defined in the statute as any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale. O.C.G.A. § 48-8-3(34.4)(B)(i). The alternative fuels produced at an eligible alternative fuel facility must be derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats. O.C.G.A. § 48-8-3(34.4)(A).

An alternative fuel facility's exemption sunsets when production and processing begins at the facility or on June 30, 2012, whichever occurs first. Production and processing means the date when an alternative fuel facility begins to manufacture alternative fuel.

Any alternative fuel facility that produces alternative fuels (ethanol, biodiesel, butanol, or their by-products) that is not for sale will not qualify for the alternative fuel facility exemption. O.C.G.A. § 48-8-3(34.4)(B)(i). Any alternative fuel facility that does not conduct at least 50 percent of its business with unaffiliated entities will not qualify for the alternative fuel facility exemption. O.C.G.A. § 48-8-3(34.4)(D).

## **Notwithstanding Any Provision of Code Section 48-8-63 to the Contrary**

The exemption is qualified with the phrase “notwithstanding any provision of Code Section 48-8-63 to the contrary.” Therefore, the exemption is available to alternative fuel facilities and to contractors and subcontractors who purchase tangible personal property to be incorporated into an eligible alternative fuel facility. Typically, pursuant to O.C.G.A. § 48-8-63, contractors and subcontractors are deemed to be the end users of the tangible personal property purchased for incorporation into real property construction and are subject to the payment of sales and use tax.

## **Sales of Tangible Personal Property to an Alternative Fuel Facility**

Sales of tangible personal property to an alternative fuel facility are exempt during the construction process. Sales of tangible personal property to an alternative fuel facility after the production and processing of alternative fuel begins are not exempt. O.C.G.A. § 48-8-3(34.4)(E).

## **Sales of Tangible Personal Property Used in or for the Construction of an Alternative Fuel Facility**

The term 'used in or for the construction' means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility. O.C.G.A. § 48-8-3(34.4)(B)(ii).

Contractors and subcontractors may purchase items to be incorporated into an alternative fuel facility without payment of sales and use tax when issued an exemption certificate by the Department of Revenue.

## **Letter Application Process and Administration in General**

The alternative fuel facility exemption provides that the commissioner may promulgate any rules and regulations necessary to implement and administer the exemption. O.C.G.A. § 48-8-3(34.4)(G). The Department is in the process of drafting and promulgating a regulation to address the administration of this exemption. In the interim, the commissioner has issued this Informational Bulletin in an effort to provide guidance to those taxpayers who are eligible for the exemption. In order to purchase items without payment of tax pursuant to this exemption, eligible taxpayers must first apply for and obtain an exemption certificate. To obtain an exemption certificate, taxpayers must provide certain information to the Georgia Department of Revenue to ensure that eligibility requirements are met.

## **Letter Application Process for Alternative Fuel Facilities**

Alternative fuel facilities seeking this exemption must first apply for an exemption certificate by submitting a letter application. The letter application must contain the following information:

1. Name of the alternative fuel facility;
2. Principle location address;
3. Mailing address;
4. Name and telephone number of contact person;
5. Federal Employer Identification Number or Social Security Number;
6. Georgia withholding registration number;
7. Georgia sales and use tax registration number; and
8. List of owner(s), partners, managing members, or officers.
9. Anticipated dates for the onset and completion of construction;
10. Type of alternative fuel to be manufactured; and
11. General description of items of tangible personal property to be purchased and anticipated cost of purchases.

## **Letter Application Process for Contractors and Subcontractors**

Contractors and subcontractors seeking this exemption must first apply for an exemption certificate by submitting a letter application. The contractor/subcontractor letter application must also contain the following information pertaining to the *general contractor or subcontractor*:

1. Name of general contractor or subcontractor;
2. Name of the alternative fuel facility;
3. Principle location;
4. Mailing address;
5. Name and telephone number of contact person;
6. Federal Employer Identification Number or Social Security Number;
7. Georgia withholding registration number;
8. Georgia sales and use tax registration number;
9. List of owner(s), partners, managing members, or officers;
10. Copy of the general contractor's or subcontractor's building permit;
11. Anticipated dates for the onset and completion of construction;
12. List of all subcontractors and state of incorporation;
13. List of all subcontractors and a brief description of each subcontractor's contract, including the types of items to be purchased;
14. Copy of all out-of-state contractor bonds approved by the Georgia Department of Revenue; and
15. General description of items of tangible personal property to be purchased and anticipated cost of purchases.

## **Where to Submit Letter Applications**

Applicants must submit the letter application and any additional documentation to:

Andrea Shepard, Exemption Analyst  
Georgia Department of Revenue  
1800 Century Boulevard, Suite 15311  
Atlanta, Georgia 30345  
Phone: 404-417-6649  
Fax: 404-417-6651  
E-Mail: [andrea.shepard@dor.ga.gov](mailto:andrea.shepard@dor.ga.gov)

## **Exemption Certificates**

The Department will administer the alternative fuel facility exemption through the issuance of an exemption certificate. Any person making a sale of tangible personal property to an alternative fuel facility, or for use in or for the construction of an alternative fuel facility, shall collect the tax imposed on the sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

The exemption certificate shall carry the following limitations:

Purchasers must provide an alternative fuel facility exemption certificate to suppliers when purchasing items to be used in the construction of an alternative fuel facility. Otherwise, suppliers are required to collect tax on the sales.

Alternative fuel facility exemption certificates are non-transferable. Only the specific taxpayer listed on the certificate is entitled to the exemption.

Purchasers must pay suppliers using a check or credit card bearing the name of the taxpayer listed on the exemption certificate.

Purchases must be delivered by the seller to the alternative fuel facility's construction site in order to qualify for the exemption.

Suppliers/purchasers must maintain all invoices, purchase orders, and a copy of the exemption certificate relating to sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility for inspection by the Department of Revenue.

Exemption certificates shall not be valid after the anticipated construction completion date as provided on the initial letter application; purchases made after production and processing begins at the alternative fuel facility or July 1, 2012, whichever occurs first.

Purchasers may request an extension of an exemption certificate by submitting a revised letter application with an updated completion date.

General contractors and subcontractors must issue purchase orders indicating that the tangible personal property being purchased is for use in or for the construction of an alternative fuel facility. Purchase orders must state that payment of sales tax to the supplier is not required. The purchase order must accompany a copy of the exemption certificate issued by the Department of Revenue.

General contractors must notify the Department in writing within thirty (30) days of the completion of any contract or subcontract. Notifications should be sent to the address listed in the section of this document pertaining to letter applications. The Department will issue a termination of the exemption certificate upon receipt of a contractor's notice of completion.

The sales and use tax retainage requirement in O.C.G.A. § 48-8-63 shall not apply to any general contractor or subcontractor who is issued a limited letter of authorization to purchase items of tangible personal property for an eligible alternative fuel facility construction project.

The nonresident registration and bonding requirements contained in O.C.G.A. §§ 48-13-31 and 48-13-32 are not affected by this exemption.

### **Refunds of Taxes Paid in Error**

If an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase qualifying tangible personal property without the payment of sales and use tax has not been obtained or is not used to purchase such tangible personal property, a refund of sales and use taxes may be requested by submitting a Claim for Refund (Form ST-12) and Waiver of Vendor's Rights (Form ST-12A). Any sales and use tax determined to be paid in error shall be refunded without interest. O.C.G.A. § 48-2-35.1.